

**Ashok Kumar Chokhani Vs. the State of Bihar and ors.**

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**Court :** Jharkhand

**Decided On :** Jun-30-2006

**Reported in :** [2006(4)JCR563(Jhr)]

**Judge :** R.K. Merathia, J.

**Acts :** Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 - Sections 7

**Appeal No. :** Civil Writ Jurisdiction Case No. 6793 of 1996 P.

**Appellant :** Ashok Kumar Chokhani

**Respondent :** The State of Bihar and ors.

**Advocate for Def. :** S.P. Roy, Adv.

**Advocate for Pet/Ap. :** P.K. Prasad and; Arvind Kumar Mehta, Advs.; Shamim Aktar

**Judgement :**

**R.K. Merathia, J.**

1. Petitioner has prayed for quashing the order dated 18.5.1993 passed by the Deputy Commissioner, Sahibganj in H.R.C.R. Case No. 5 of 1992-93 (Annexure 10) and the revisional order dated 30.12.1994 passed by the Commissioner, Santhal Pargana Division at Dumka in H.R.C. Revision No. 6 of 1993-94

(Annexure 11) confirming the said order.

2. According to the petitioner, Inspector General of Prison and the other Jail authorities had taken the building and the land on rent from the grand father and father of the petitioner in the year 1945 on a monthly rent Rs. 300/- and Rs. 22.50 Paise per month as Latrine Tax, for the purpose of running Sub-Jail at Sahibganj. The petitioner filed an application on 11.6.1990 before the Sub-Divisional Officer-cum-House Rent Controller, Sahibganj for enhancement of rent which was registered as H.R. Case No. 10 of 1990. After hearing the parties and considering the reports and other relevant materials, the House Rent Controller by order dated 21.10.1992 fixed 0.15 Paise per sq.ft. as flat rate for the covered area of 17,451 sq.ft. and uncovered area of 20,003 sq.ft. total 37,454 sq.ft., which came to about Rs. 5,600/- per month as fair rent, payable with effect from 1.7.1990. In the appeal filed by the Jail authorities, the Deputy Commissioner, Sahibganj reduced the said fair rent to Rs. 390/- per month (20% increase on Rs. 300/- i.e. Rs. 60/-+ Latrine Tax Rs. 22.50 Paise and its 20% i.e. Rs. 5/-), payable with effect from the order of the House Rent Controller. The petitioner's revision against the said order was dismissed by the Commissioner, Santhal Pargana Division, Dumka vide Annexure 11 dated 30.12.1994.

3. Mr. P.K. Prasad, appearing for the petitioner, submitted that the Deputy Commissioner took into consideration irrelevant matters inasmuch as there is nothing to show that the petitioner or his predecessor-in-interest were ever called upon to do any repair work of the building in question or to adjust one month's rent in a year, against repairs, as provided under the law. Moreover Section 7 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 (the Act for short) relied upon by the Deputy Commissioner is not applicable in this case as the petitioner's application was not for re-determination of fair rent, after making additions, improvement or alteration etc. He further submitted that the House Rent Controller had already observed that the prevailing rate of rent was not available as the Sub-Jail was away from the town. He further submitted that in *Saraswati Devi and Ors. v. Commissioner of Bhagalpur Division* 1996 (1) PLTR 924 and *Rajendra Behl v. Commissioner, South Chotanagpur Division, Ranchi* and Ors. 2003 (3) JCR 536 (Jhr) (FB) the enhancement of rent beyond 25% was upheld interpreting the

provisions of law.

4. Mr. M.S. Akhtar, learned Standing Counsel No. II, appearing for the State of Jharkhand could not dispute the said position but submitted that the Sub-Divisional Officer-cum-House Rent Controller should not have fixed flat rate of 0.15 Paise per sq.ft. for covered and uncovered area both. He further pointed out that the building in question has been handed over back to the petitioner on 31.5.1996.

5. Mr. Prasad then submitted that even the rent fixed by the House Rent Controller was on lower side. For 45 years, the rent was only Rs. 300/- per month for such a huge big building constructed over about 17,451 sq.ft. along with an uncovered area of 20,003 sq.ft. Moreover, more than fifteen years have passed after petitioner filed application for fixation of fair rent. Therefore, he submitted that the order of House Rent Controller may not be interfered with by this Court, in the interest of justice.

6. I am satisfied that the impugned orders cannot be sustained. The Deputy Commissioner wrongly applied Section 7 of the Act. He took into consideration irrelevant matters as there is nothing to show that the petitioner or his predecessor-in-interest were ever called upon to make any repair work or to adjust the rent of one month in every year against the expenses of repairing, as provided under the law. The order of the Commissioner is also against the said judgments of this Court.

7. However, after 15 years, I am not inclined to remand the matter to the House Rent Controller especially when the building has now been handed over back to the petitioner. In order to put an end to this litigation, in my opinion, 15 Paise for covered area and 10 Paise for uncovered area will be fair and reasonable rent. This comes to Rs. 4,618/-per month.

8. However, taking into consideration the entire matter, I fix a lump sum rate of Rs. 4,500/- per month payable from 1.1.1990 till 31.5.2006. The respondents are directed to ensure that the said amount is paid to the petitioner within three months from the date of communication of this order, failing which, they will be liable to pay interest at the rate of six per cent per annum. The respondents may

take a decision for apportionment between themselves.

9. With the aforesaid directions, this writ petition is disposed of. There will be no order as to costs.

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